

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BETH ANN KUHN,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

Case No. C15-5109JLR

ORDER AFFIRMING  
DEFENDANT'S DECISION TO  
DENY BENEFITS

**I. INTRODUCTION**

Plaintiff Beth Ann Kuhn seeks review of the denial of her application for disability insurance benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) erred in assessing the medical evidence in the record, Plaintiff’s credibility, and Plaintiff’s residual functional capacity (“RFC”). (Op. Br. (Dkt. # 8) at 1.) As discussed below, the court AFFIRMS Defendant Commissioner Carolyn W. Colvin’s final decision and DISMISSES the case with prejudice.

**II. BACKGROUND**

On January 4, 2012, Plaintiff applied for benefits, alleging disability as of December 14, 2011. (Administrative Record (“AR”) (Dkt. # 4) at 17.) Plaintiff’s

1 applications were denied initially and on reconsideration. (*Id.*) After the ALJ conducted  
 2 a hearing on May 1, 2013, the ALJ issued a decision finding Plaintiff not disabled. (AR  
 3 at 17-24.)

4 The ALJ utilized the five-step disability evaluation process,<sup>1</sup> and his findings are  
 5 summarized as follows:

6 **Step one:** Plaintiff has not engaged in substantial gainful activity since December  
 7 14, 2011, the alleged onset date.

8 **Step two:** Plaintiff has the following severe impairments: obesity and thoracic  
 9 aortic arch aneurysm status post thoracotomy and open repair.

10 **Step three:** These impairments do not meet or equal the requirements of a listed  
 11 impairment.<sup>2</sup>

12 **Residual functional capacity:** Plaintiff can perform light work as defined in 20  
 13 C.F.R. § 404.1567(b). She can occasionally climb ladders, ropes, or scaffolds.  
 14 She can frequently climb ramps and stairs. She can occasionally bend, kneel,  
 stoop, crouch, and crawl. She should avoid concentrated exposure to extreme  
 cold, extreme heat, vibration, industrial strength fumes, odors, dusts, gases or  
 other pulmonary irritants, and hazards.

15 **Step four:** As Plaintiff is capable of performing past relevant work as a floor  
 16 attendant and arcade attendant, Plaintiff is not disabled.

17 (*See* AR at 19-24.) The Appeals Council denied Plaintiff's request for review, making  
 18 the ALJ's decision the Commissioner's final decision. (*See* AR at 1-6.)<sup>3</sup>

### 19 III. ANALYSIS

20 Pursuant to 42 U.S.C. § 405(g), this court may set aside the Commissioner's

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21 <sup>1</sup> 20 C.F.R. § 416.920.

22 <sup>2</sup> 20 C.F.R. Part 404, Subpart P. Appendix 1.

23 <sup>3</sup> The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 denial of social security benefits if the ALJ's findings are based on legal error or not  
2 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
3 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
4 1999)).

#### 5 **A. Evaluation of the Medical Evidence**

6 Plaintiff argues that the ALJ erred in evaluating the medical evidence. (*See Op.*  
7 *Br.* at 2-8.)<sup>4</sup> The ALJ is responsible for determining credibility and resolving ambiguities  
8 and conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.  
9 1998). Where the medical evidence in the record is not conclusive, "questions of  
10 credibility and resolution of conflicts" are solely the functions of the ALJ. *Sample v.*  
11 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such cases, "the ALJ's conclusion must  
12 be upheld." *Morgan v. Comm'r, Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999).

14 In resolving questions of credibility and conflicts in the evidence, an ALJ's  
15 findings "must be supported by specific, cogent reasons." *Reddick*, 157 F.3d at 725. The  
16 ALJ can do this "by setting out a detailed and thorough summary of the facts and  
17 conflicting clinical evidence, stating his interpretation thereof, and making findings." *Id.*  
18 The ALJ also may draw inferences "logically flowing from the evidence." *Sample*, 694  
19 F.2d at 642. Further, the court itself may draw "specific and legitimate inferences from  
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21 <sup>4</sup> In the section of Plaintiff's opening brief arguing that the ALJ improperly evaluated the  
22 medical evidence, Plaintiff outlines the findings of Satyavardhan Pulukurthy, M.D., and Shankar  
23 Sundaram, M.D., and summarily argues that the ALJ erred by failing to acknowledge that this  
medical evidence fully supported Plaintiff's testimony and could reasonably be expected to  
explain all of her alleged symptoms and limitations. (*See Op. Br.* at 2-7.) This argument, then,  
actually alleges error in the ALJ's evaluation of Plaintiff's credibility and will be addressed in  
that section of the court's analysis.

1 the ALJ's opinion." *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989).

2 Plaintiff argues that the ALJ erred by giving too much weight to the opinions of  
3 state agency medical consultants Elizabeth St. Louis, M.D., and Dennis Koukol, M.D.  
4 (*See Op. Br.* at 7-8.) The court disagrees.

5 A state agency medical consultant is a "highly qualified" physician with expertise  
6 in evaluating "medical issues in disability claims." Social Security Ruling ("SSR")  
7 96-6p, 1996 WL 374180. at \*2. An ALJ is not bound by findings made by state agency  
8 physicians, but the ALJ may not ignore these opinions and must explain the weight given  
9 to the opinions in his or her decision. *See id.* An ALJ must also evaluate the degree to  
10 which the providers of these opinions consider all of the pertinent evidence, including  
11 opinions of treating and other examining sources. *See* 20 C.F.R. § 404.1527(c)(3).

13 Here, the ALJ gave great weight to the opinions of Dr. St. Louis and Dr. Koukol  
14 because they were consistent with clinical findings in the record and because the doctors  
15 had the benefit of reviewing the record. (*See AR* at 23.) Plaintiff first argues that the  
16 opinions were not in fact consistent with the clinical findings of Dr. Pulukurthy and Dr.  
17 Sundaram, which "support a limitation to sedentary work." (*Op. Br.* at 7.) However,  
18 Plaintiff does not specifically identify which clinical findings show that she was limited  
19 to sedentary work. As the ALJ explained elsewhere in his decision, while the record  
20 contains evidence of symptoms that required surgeries, postoperative examinations  
21 showed appropriate recovery and normal findings. (*See AR* at 22, 353, 458, 460.)  
22 Furthermore, Plaintiff presents no evidence that either Dr. Pulukurthy or Dr. Sundaram  
23

1 opined that Plaintiff was limited to sedentary work; Plaintiff simply alleges this limitation  
2 based on her own interpretation of the medical evidence.

3 Second, Plaintiff argues that the ALJ erred by giving great weight to the opinions  
4 of the state agency medical consultants because the consultants did not in fact review any  
5 evidence beyond April 2012. (*See* Op. Br. at 7.) However, Plaintiff fails to show how  
6 the opinions, and therefore the resulting RFC, are no longer supported by substantial  
7 evidence. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (“The burden is on  
8 the party claiming error to demonstrate not only the error, but also that it affected his  
9 ‘substantial rights,’ which is to say, not merely his procedural rights.”) (citing *Shinseki v.*  
10 *Sanders*, 556 U.S. 396, 407-09 (2009)); *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d  
11 1050, 1055 (9th Cir. 2006) (finding error harmless where it is irrelevant to ALJ’s ultimate  
12 disability conclusion). The leg pain for which Plaintiff sought surgery in December 2012  
13 improved after the operation. (*See* AR at 458, 460.) No physician assessed any  
14 limitations beyond those in the RFC during the period after the state agency medical  
15 consultants offered their opinions. Therefore, any error in relying on the opinions is  
16 harmless.  
17

### 18 **B. Evaluation of Plaintiff’s Credibility**

19 Plaintiff argues that the ALJ erred in assessing her credibility. (*See* Op. Br. at  
20 8-13.) The court disagrees.

21 Questions of credibility are solely within the control of the ALJ. *See Sample*, 694  
22 F.2d at 642. The court should not “second-guess” this credibility determination. *Allen v.*  
23

1 *Heckler*, 749 F.2d 577, 580 (9th Cir. 1984). To reject a claimant's subjective complaints,  
2 the ALJ must provide "specific, cogent reasons for the disbelief." *Lester v. Chater*, 81  
3 F.3d 821, 834 (9th Cir. 1996) (citation omitted). The ALJ "must identify what testimony  
4 is not credible and what evidence undermines the claimant's complaints." *Id.*; *see also*  
5 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Unless affirmative evidence shows  
6 the claimant is malingering, the ALJ's reasons for rejecting the claimant's testimony  
7 must be "clear and convincing." *Lester*, 81 F.2d at 834. That some of the reasons for  
8 discrediting a claimant's testimony should properly be discounted does not render the  
9 ALJ's determination invalid, as long as that determination is supported by substantial  
10 evidence. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

12 Here, the ALJ found Plaintiff's allegations not fully credible because they were  
13 inconsistent with her daily activities. (*See* AR at 23.) The Ninth Circuit has recognized  
14 that an ALJ may use a claimant's daily activities to form the basis of an adverse  
15 credibility determination when they contradict the claimant's other testimony. *See Orn v.*  
16 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). The ALJ noted Plaintiff's testimony that she  
17 could not sit for more than an hour, could not stand for more than 20 minutes at a time,  
18 could not walk more than a block at a time or for more than 15 minutes without needing  
19 to rest for 10 minutes, and generally needed to rest after 30 to 60 minutes of any activity.  
20 (*See* AR at 22-23, 40-41, 182.) The ALJ then outlined activities that were inconsistent  
21 with these limitations, including performing household chores without help, going  
22 grocery shopping, going to a quilt club, going to the casino, doing Tai Chi, and traveling  
23

1 to Missouri. (*See* AR at 23, 39, 43-44, 46, 179-81.)

2 Plaintiff argues that the ALJ's failure to properly evaluate the medical evidence  
3 from Dr. Sundaram and Dr. Pulukurthy "tainted his evaluation of [Plaintiff's] testimony."  
4 (Op. Br. at 8-9.) However, Plaintiff fails to argue with any specificity how the ALJ  
5 improperly evaluated that evidence. Instead Plaintiff simply lists the evidence and asks  
6 the court to interpret it differently than the ALJ interpreted it. (*See* Op. Br. at 2-7.) It is  
7 not the role of this court to reweigh the evidence or substitute its judgment for that of the  
8 Commissioner. *See Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). The ALJ  
9 provided a clear and convincing reason supported by substantial evidence for discounting  
10 Plaintiff's testimony. Therefore, the ALJ did not err in assessing Plaintiff's credibility.  
11

### 12 **C. Evaluation of Plaintiff's RFC and the ALJ's Step Four Finding**

13 Plaintiff argues that given the ALJ's harmful errors alleged above, the RFC  
14 assessed by the ALJ is incomplete, and the step four finding is not supported by  
15 substantial evidence. (*See* Op. Br. at 13-15.) However, because the ALJ did not commit  
16 any harmful error in evaluating the medical evidence or Plaintiff's credibility, Plaintiff  
17 has not shown error in the RFC or in the step four finding that she is capable of  
18 performing past work.  
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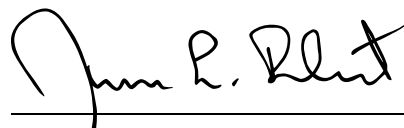
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the court AFFIRMS the Commissioner's final decision  
3 and DISMISSES this case with prejudice.

4 DATED this 21st day of January, 2016.

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8 JAMES L. ROBART  
United States District Judge